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November 2, 2020

**VIA CM-ECF**

The Honorable Richard G. Andrews  
District Court of Delaware  
844 North King Street  
Wilmington, DE 19801

**In re: Sitagliptin Phosphate ('708 & '921) Patent Litigation – MDL 2902**

Dear Judge Andrews,

Defendants<sup>1</sup> write in response to Merck's October 30, 2020 letter (D.I. 277) regarding Merck's request for leave from the Patent Trial and Appeal Board ("the Board") to seek a certificate of correction to claims 5-7 of U.S. Patent No. 7,326,708 ("the '708 patent"), which omitted key details.

First, we understand that the *inter partes* review ("IPR") petitioners have objected to Merck's request to the Board for leave to file a certificate of correction and will ask the Board deny Merck's request because, consistent with Your Honor's ruling at the *Markman* hearing, claims 5-7 of the '708 patent do not contain "a mistake of a clerical or typographical nature, or of minor character" as required by 35 U.S.C. § 255, and correcting them would require a "wholesale" change. *See Markman* Tr. (D.I. 192) at 94. Second, IPR petitioners have requested leave to file with the Board the full transcript of the *Markman* hearing in advance any conference with the Board regarding Merck's request for leave to seek a certificate of correction.

\* \* \*

Finally, the certificate of correction dispute before the Board is distinct from and should have no

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<sup>1</sup> This letter is sent on behalf of Defendants Anchen Pharmaceuticals, Inc. and Par Pharmaceutical, Inc.; Sandoz, Inc.; Apotex Inc. and Apotex Corp.; Zydus Pharmaceuticals (USA) Inc. and Cadila Healthcare Ltd.; Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc. and Teva Pharmaceuticals USA, Inc.; Sun Pharmaceutical Industries Ltd.; Lupin Limited and Lupin Pharmaceuticals, Inc.; Mylan Pharmaceuticals Inc.; Ajanta Pharma Limited and Ajanta Pharma USA Inc.; Aurobindo Pharma Limited; Aurobindo Pharma USA, Inc.; and Dr. Reddy's Laboratories, Inc. and Dr. Reddy's Laboratories, Ltd. (all collectively, "Defendants").



bearing on the timing of the Court's issuance of its written Markman decision.

Respectfully,

*/s/ Dominick T. Gattuso*

Dominick Gattuso (#3630)

DTG/ram

cc: All counsel of record (via CM-ECF)